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No. 91-1327

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

JAMES D. HOLDINESS,
Petitioner,

v.

CSX TRANSPORTATION, INC.,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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PETITIONER'S REPLY BRIEF

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LIST OF PARTIES

James D. Holdiness ("Petitioner") was the Appellant in the proceeding below before the United States Court of Appeals for the Fourth Circuit whose per curiam opinion affirmed the judgment of the United States District Course granting summary judgment in favor of CSX Transportation, Inc.

CSX Transportation, Inc., ("Respondent") was the Appellee in the proceeding before the United States Court of Appeals for the Fourth Circuit. CSXT is a wholly owned subsidiary of the publicly held entity known as CSX Corporation. There are no other publicly held entities that have a direct financial interest in the outcome of this case.

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PETITIONER'S REPLY BRIEF

Petitioner, James D. Holdiness, respectfully requests that this Honorable Court grant the Petition for Writ of Certiorari seeking review of the decision of the Fourth Circuit Court of Appeals affirming the grant of summary judgment against Petitioner James D. Holdiness.

REASONS THE PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED

The Petitioner recognizes that review on a Writ of Certiorari is a matter of judicial discretion and that "a Petition for a Writ of Certiorari will be granted only when there are special and important reasons therefor." Supreme Court Rule 10. The Petitioner submits that there are special and important reasons therefor.

The mere fact that the District Court granted summary judgment and the Court of Appeals affirmed by per

curiam opinion should not and cannot be conclusive as the reason for a denial of review by this Court, especially when there was a glaring error committed by both lower courts.

In the first case, the Petitioner was inspecting a box car on which the door was open. The rules of the Respondent required an employee to try to close said door before seeking the assistance of a co-employee or other equipment. The evidence indicated that a co-employee, earlier the same day, was confronted with the same open door on the same box car and then sought aid, and with the assistance of another co-employee was able to close the box car door. This, we submit, created a foreseeable danger to any other employee who might later be confronted with the same door on the same box car. The Respondent was aware of the previous incident to the other co-employee so that it was obligatory on the part of the Respondent, in order to comply with its duty to furnish its employees with a reasonably safe place in which to work, to have warned the Petitioner of the potentially dangerous condition of said box car door, but it failed to do so. When the Petitioner firstly attempted to close the door by himself, as required, the inevitable occurred—the foreseeable danger became a reality, and he was injured. The Respondent's failure to have done what it was required to do was negligence.

The Federal Employers' Liability Act provides that a Railroad shall be liable in damages for negligence, which in whole or in part, (and even in the slightest, says this Court in *Rogers v. Missouri Pacific Railroad Co.*, 352 U.S. 500 (1957)), causes injury to one of its employees. The failure of the Respondent to have warned the Petitioner of the prior incident was evidence of negligence, more than even the slightest, and constitutes a special and important reason for the granting of the Petition for Writ of Certiorari.

The same situation prevails with the second and third incidents which would likewise constitute special and im-

portant reasons for the granting of the Petition for Writ of Certiorari.

The Federal Employers' Liability Act, by its history, mandates that the Act is to be liberally construed in favor of the injured worker, in order to effect its remedial purpose. *Johnson v. Southern Pacific Co.*, 25 S.Ct. 158, 196 U.S., 49 L.Ed. 363. See also *Green v. River Terminal Ry. Co.*, CCA 6, 1985, 763 F.2d 805. This Court has granted Petitions for Writ of Certiorari many times in which the railroads have argued that certiorari was improvidently granted, which is the same position the Respondent has taken in this case.

CONCLUSION

In conclusion, to deny the Petition for Writ of Certiorari would be a gross miscarriage of justice.

Respectfully submitted,

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